IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.924 OF 2003
IN
SECOND APPEAL NO.623 OF 2003

Ashok Shridhar Rasal ...Applicant
Versus
Shri Shridhar Ganesh Rasal
(since deceased) his legal heirs
Smt.Kamal Shridhar Rasal & Ors. ...Respondents

Shri R.V.Govilkar for the Applicant.
Shri R.M.Pethe i/by Shri R.G.Ketkar for the Respondents.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 29, 2007.

P.C.:

1. Rule. Heard Advocates appearing for the parties. The operative part of the decree passed by the Appellate Court reads thus:

> "2. Judgment and decree in Spl.Civil Suit No.222 of 21986 is hereby set aside and instead of it, following order is passed:
>
> (1) It is hereby declared that the Plaintiff Nos.1A to 1D and defendant are the joint owner of the suit house upon plot No.262, as detailed in para No.1 of the plaint.
>
> (2) The defendant is directed to

put the Plaintiff Nos.1A to 1D in joint possession of the suit house alongwith him". page 43

2. The original Plaintiff was the father of the Applicant. The Respondent-A is the widow of the deceased Plaintiff and the mother of the Applicant. The Respondent-B is the married sister of the Applicant. The Respondents-C and D are the real brothers of the Applicant. By the decree passed by the Appellate Court, the Respondents and the Applicant are declared as joint owners of the suit property. So far as second part of the decree directing the Applicant to put the Respondents in joint possession of the suit house is concerned, the implementation and execution of the said decree will have to be stayed as Second Appeal has been admitted. If that part of the decree is attempted to be executed, it will create serious difficulties considering the strained relationship between the parties.

3. As a result of grant of stay, the Respondents will not get possession or joint possession of the suit property.

4. However, rights of both the parties will have to

be protected during the pendency of the Appeal. The Applicant will be entitled to construct first floor above the existing structure. It will be open for the Applicant to commence construction of the first floor within a period of one year from today. He shall complete the same within a period of two years from today. Thereafter, the Respondents are entitled to construct second floor of the equivalent area.

5. If the Applicant fails to start construction of the first floor within a period of one year from today, it will be open for the Respondents to apply to this Court for modification of this interim arrangement and to apply for permission to construct the first floor.

6. Hence, the Civil Application is disposed of by passing following order:

(i) The execution and operation of clause 2(2) of the operative part of the decree of the Appellate Court will remain stayed till final disposal of the Appeal.

(ii) By way of an arrangement pending the hearing of the Second Appeal, it will be open for the Applicant to construct first floor above the existing single storeyed structure. Thereafter,

it will be open for the Respondents to construct second floor having the same area.

(iii) If the Applicant fails to start construction within a period of one year from today, it will be open for the Respondents to apply to this Court for modification of this order.

(iv) The aforesaid arrangement will be without prejudice to rights and contentions of both the parties.

(v) Civil Application is disposed of accordingly.

(vi) Liberty to apply in case of difficulty.

JUDGE